



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,994	01/12/2001	Wesley Everett Lamarche	1165.52US01	1055

23552 7590 12/18/2003
MERCHANT & GOULD PC
P.O. BOX 2903
MINNEAPOLIS, MN 55402-0903

EXAMINER

HARRIS, CHANDA L

ART UNIT PAPER NUMBER

3714

DATE MAILED: 12/18/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/759,994

Applicant(s)

LAMARCHE ET AL.

Examiner

Chanda L. Harris

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Status of Claims

In response to the Amendment filed 9/29/03, Claims 1-23 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 22 recites the limitation "the display device" in lines 9-10. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-10 and 22-23 are rejected under 35 U.S.C. 102(e) as being anticipated by Loiacono (US 6,175,84).

1. [Claims 1, 22]: Regarding Claims 1 and 22, Loiacono discloses storing test content in a memory system (e.g. disks), the test content including at least a question portion and a response portion, capturing at least a portion of the test content in a test item image, the test item image including at least the question portion and the response portion (i.e. answers), overlaying a response control (i.e. answer format) over the test item image, the test item image and response control together defining a test item, and presenting the test item to the respondent at the first workstation for electronically generating a response from the test item. See Abstract. Loiacono discloses wherein, to provide uniformity in display without regard to the parameters of the display device, no information is presented to the respondent in text format. See Col.4: 56-59.
2. [Claim 2]: Regarding Claim 2, Loiacono discloses the step of receiving through the first workstation (inherent in light of computer interactive format) a response electronically generated by the respondent. See Abstract.

3. [Claim 3]: Regarding Claim 3, Loiacono discloses wherein the step of storing the test content further comprises positioning in at least one file the question portion (i.e. captured images), the response portion (i.e. answer formats), and an illustration portion (i.e. captured images). See Abstract.
4. [Claim 4]: Regarding Claim 4, Loiacono discloses wherein the step of capturing comprises printing (inherent) and then electronically scanning (i.e. optical scanning) the test content. See Abstract.
5. [Claim 5]: Regarding Claim 5, Loiacono discloses wherein the step of capturing comprises electronically capturing (i.e. copying) the test item image from an electronic file (e.g. Metafile) containing the test content. See Col.4: 60-Col.5: 10.
6. [Claim 6]: Regarding Claim 6, Loiacono discloses wherein the storing step includes storing test content that includes a text portion and an illustration portion (i.e. textual and/or graphical material). See Abstract.
7. [Claim 7]: Regarding Claim 7, Loiacono discloses overlaying a navigation control that is presented to the respondent for enabling the respondent to navigate (i.e. TURN PAGE) forward or backward to other test items. See FIG.2.
8. [Claim 8]: Regarding Claim 8, Loiacono discloses wherein the response control comprises at least one device (i.e. a mouse) for selecting one of a plurality of response options. See Col.7: 26-29.
9. [Claim 9]: Regarding Claim 9, Loiacono discloses wherein the response control is selected from a group consisting of a radio box (i.e. draw an X), check box (i.e. draw an X), a text box (i.e. fill in the blank), an electronic drawing box (i.e. draw a box), a drop

and drag overlay (i.e. drag and drop), and a hot spot overlay. See Col.8: 23-28, 37-40, and 61-63.

10. [Claim 10]: Regarding Claim 10, Loiacono discloses wherein a plurality of question portions and response portions are captured in a single test item image (i.e. modified captured image). See Abstract.

11. [Claim 23]: Regarding Claim 23, Loiacono discloses wherein all information provided to the respondent is provided in an image-based format. See Col.7: 24.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loiacono in view of Mairs et al. (US 6,268,855).

[Claims 12-19]: Regarding Claims 12-19, Loiacono does not disclose expressly wherein the window includes a defined number of pixels in each direction, and wherein additional pixels may be viewed by scrolling subject matter through the window, and wherein the same amount of scrolling is required to view the question portion in the window on the first workstation display device and the other workstation display device, despite the different display resolutions (e.g. simulating a high-resolution display of a first computer on a low-resolution display of a second computer); displaying a test item

on a first display having a first resolution (e.g. low-resolution) and displaying the first test item on a second display having a second resolution larger (e.g. high-resolution) than the first resolution, wherein the same number of pixels is used to display the first test item on the first display and on the second display; wherein the first test item appears the same size on the first display and the second display; displaying the test item to a first respondent on a first workstation having a first display with a first resolution and displaying the test item to a second respondent on a second workstation having a second display with a second resolution (e.g. low-resolution), the first resolution being higher (e.g. high-resolution) than the second resolution, wherein the same amount of scrolling is required to view the test item on the first display and the second display; wherein the first display and the second display each define a viewing area (i.e. viewport) and the viewing areas are approximately equal; wherein the test item appear the same size on the first and second display. However, Loiacono teaches computer images in a bitmap format or an equivalent graphical format which is device independent, a format which can be used with a variety of screen resolutions. See Col.4: 56-59. Mairs teaches the concept of creating the same resolution for two computer systems with different resolutions. See Abstract, Col.3: 28-45. Therefore, at the time of the invention, it would have been obvious to one of ordinary skill in the art to incorporate the aforementioned limitations into the method and system of Loiacono, in light of the teaching of Mairs, in order to resolve display resolution differences between two different computer systems.

Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection. See rejection above. Therefore, this action is made NON-FINAL.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chanda L. Harris whose telephone number is 703-308-8358. The examiner can normally be reached on M-F 6:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



Chanda L. Harris
Examiner
Art Unit 3714

ch.